

## PROPOSED RULES

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### AMENDMENTS TO THE RULES OF CIVIL PROCEDURE RELATING TO DOMESTIC RELATIONS MATTERS

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#### SUPREME COURT OF PENNSYLVANIA DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE

#### RECOMMENDATION 117

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than **Wednesday, August 15, 2012** directed to:

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Deleted material is **bold** and **[bracketed]**. New material is **bold** and underlined.

*By the Domestic Relations Procedural Rules Committee*

Carol S. Mills McCarthy, *Chair*

**SUPREME COURT OF PENNSYLVANIA**

**DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

**RECOMMENDATION 117**

**Rule 1910.3. Parties. Obligor. Obligee.**

(a) An action may be brought

(1) by a person, including a minor parent or a minor spouse, to whom a duty of support is owing, or

(2) on behalf of a minor child by a person having custody of the child, without appointment as guardian ad litem, or

(3) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

(4) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

(5) by a parent, guardian or public or private agency on behalf of an unemancipated child over eighteen years of age to whom a duty of support is owing, or.

(6) by any person who may owe a duty of support to a child or spouse.  
**If the person to whom a duty of support may be owed does not appear, the action may be dismissed without prejudice for the petitioner to seek further relief from the court.**

(b) The trier of fact shall enter an appropriate **[child support]** order based upon the evidence presented, without regard to which party initiated the support action, **[or]** filed a modification petition **or filed a petition for recovery of support overpayment.** The determination of which party will be the obligee and which will be the obligor will be made by the trier of fact based upon the respective incomes of the parties, consistent with the support guidelines and existing law, and the custodial arrangements at the time of the initial or subsequent conference, hearing or trial. If supported by the evidence, the party named as the defendant in the initial pleading may be deemed to be the obligee, even if that party did not file a complaint for support. The provisions of this subdivision do not apply to parties seeking spousal support or alimony pendente lite. Parties seeking spousal support or alimony pendente lite must assert a claim in an appropriate pleading with proper notice served upon the other party.

\* \* \*

**Rule 1910.16-2. Support Guidelines. Calculation of Net Income.**

Generally, the amount of support to be awarded is based upon the parties' monthly net income.

\* \* \*

(c) *Monthly Net Income.*

(1) Unless otherwise provided in these [R]rules, the court shall deduct only the following items from monthly gross income to arrive at net income:

- (A) **mandatory** federal, state, and local [income] **payroll** taxes;
- (B) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;
- (C) **mandatory** union dues; and
- (D) alimony paid to the other party.

\* \* \*

**Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments.**

\* \* \*

(g) *Overpayments.*

(1) **Order in Effect.** If there is an overpayment **in an amount in excess of two months of the monthly support obligation** and a charging order remains in effect, after notice to the parties as set forth below, the domestic relations section shall reduce the charging order by 20% of the obligor's share of the basic child support obligation or an amount sufficient to retire the overpayment by the time the charging order is terminated. The notice shall advise the [obligee] **parties** to contact the domestic relations section within [60] **30** days of the date of the mailing of the notice if [the obligee] **either or both of them** wishes to contest the **proposed** reduction of the charging order. If [the obligee] **either party** objects, the domestic relations section shall schedule a conference to provide the [obligee] **objecting party** the opportunity to contest the proposed action. If [the obligee does not] **neither party** responds to the notice or objects to the proposed action, the domestic relations section shall have the authority to reduce the charging order.

(2) **Order Terminated.** If there is an overpayment in any amount and there is no charging order in effect, within one year of the termination of the charging order, the former obligor may file a petition with the domestic relations section seeking recovery of the overpayment. A copy shall be served upon the former obligee as original process. The domestic relations section shall schedule a conference on the petition, which shall be conducted consistent with the rules governing support actions. The domestic relations section shall have the authority to enter an order against the former obligee for the amount of the overpayment in a monthly amount to be determined by the trier of fact after consideration of the former obligee's ability to pay.

\* \* \*

**Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification. Petition for Recovery of Support Overpayment.**

(a) The complaint in an action for support shall be substantially in the following form:

(Caption)  
COMPLAINT FOR SUPPORT

\* \* \*

5. Plaintiff seeks to pay support or receive support for the following persons:

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\* \* \*

7. A previous support order was entered against the  **plaintiff**  defendant on \_\_\_\_\_ in an action at \_\_\_\_\_ (court, term and docket number) in the amount of \$\_\_\_\_\_ for the support of \_\_\_\_\_ (names)

There are (no) arrearages in the amount of \$\_\_\_\_\_.

The order has (not) been terminated.

8.  **Plaintiff**  **Defendant** last received support from the **[Defendant] other party** in the amount of \$\_\_\_\_\_ on \_\_\_\_\_ (date).

WHEREFORE, Plaintiff requests that an order be entered **[against Defendant and in favor of the Plaintiff and] on behalf of** the aforementioned child(ren) **and or spouse** for reasonable support and medical coverage.

\* \* \*

**(h) A petition for recovery of a support overpayment when a support order remains in effect shall be in substantially the following form:**

**(Caption)**

**Petition for Recovery of Support Overpayment in Active Case.**

**1. Obligor and Obligee are parties in a support action at the docket number captioned above.**

**2. There is an overpayment owing to Obligor in an amount in excess of two months of the monthly support obligation.**

**Wherefore, Obligor requests that, pursuant to Pa.R.C.P. 1910.19(g)(1), the charging order be reduced by 20% of Obligor's share of the basic child support amount or an amount sufficient to retire the overpayment by the time the charging order is terminated.**

**I verify that the statements in this petition are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.**

\_\_\_\_\_ (date) \_\_\_\_\_ (Obligor signature)

**(i) A petition for recovery of a support overpayment when a support order has been terminated shall be in substantially the following form:**

**(Caption)**

**Petition for Recovery of Support Overpayment in Closed Case.**

**1. Plaintiff is an adult individual residing at: \_\_\_\_\_**

\_\_\_\_\_

**2. Defendant is an adult individual residing at : \_\_\_\_\_**

\_\_\_\_\_

3. Plaintiff and defendant were parties in a prior support action that was terminated by order dated \_\_\_\_\_ at docket number \_\_\_\_\_.

4. There is an overpayment owing to the instant plaintiff.

Wherefore, the plaintiff requests that, pursuant to Pa.R.C.P. 1910.19(g)(2), an order be entered against the defendant and in favor of the plaintiff in the amount of the overpayment.

I verify that the statements in this petition are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

\_\_\_\_\_ (date) \_\_\_\_\_ (plaintiff signature)

(i) The order to be attached at the front of the petition for recovery of support overpayment in closed case set forth in subdivision (i) shall be in substantially the following form:

(Caption)

ORDER OF COURT

You, \_\_\_\_\_, defendant, are ordered to appear at \_\_\_\_\_ before \_\_\_\_\_, a conference officer of the Domestic Relations Section, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .M., for a conference, after which the officer may recommend that an order for the recovery of a support overpayment be entered against you.

You are further ordered to bring to the conference

(1) a true copy of your most recent federal income tax return, including W-2s, as filed,

(2) your pay stubs for the preceding six months, and

(3) the Income Statement and the appropriate Expense Statement, if you are claiming that you have unusual needs or unusual fixed obligations.

Date of Order:

\_\_\_\_\_  
\_\_\_\_\_ J.

**YOU HAVE THE RIGHT TO A LAWYER, WHO MAY ATTEND THE CONFERENCE AND REPRESENT YOU. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

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**(Name)**

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**(Address)**

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**(Telephone Number)**

**AMERICANS WITH DISABILITIES ACT OF 1990**

**The Court of Common Pleas of \_\_\_\_\_ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.**

\* \* \*

**Explanatory Comment 2012**

**The form complaint for support in subdivision (a) has been amended to accommodate cases initiated pursuant to Rule 1910.3(a)(6). Because a support order may be entered against either party without regard to which party initiated the support action pursuant to Rule 1910.3(b), a party who believes that he or she may owe a duty of support may use the complaint form to initiate the action even if he or she ultimately is determined to be the obligor. In active charging support cases in which there is an overpayment in an amount in excess of two months of the monthly support obligation and the domestic relations section fails to reduce the charging order automatically to recoup the overpayment pursuant to Rule 1910.19(g)(1), the obligor may file a petition for recovery as set forth in subdivision (h) above. A separate form petition has been added in subdivision (i) by which a former support obligor may seek recovery of an overpayment in any amount in terminated cases pursuant to Rule 1910.19(g)(2).**